

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IN RE: WESTERN STATES
WHOLESALE NATURAL GAS
ANTITRUST LITIGATION,

AND ALL RELATED CASES.

FAIRHAVEN POWER COMPANY,

Plaintiff,

v.

ENCANA CORPORATION, et. al.,

Defendants.

ABELMAN ART GLASS, On Behalf of
Itself and All Others Similarly Situated,

Plaintiff,

v.

ENCANA CORPORATION et. al.,

Defendants.

ORDER

MDL 1566
CV-S-1431-PMP (PAL)
BASE FILE

MDL 1566
CV-S-05-0243-PMP (PAL)

MDL 1566
CV-S-05-0437-PMP (PAL)

1 UTILITY SAVINGS & REFUND
SERVICES, et al.,

2 Plaintiffs,

3 v.

4 RELIANT ENERGY SERVICES, INC., et
5 al.,

6 Defendants.

MDL 1566
CV-S-05-0110-PMP (PAL)

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8 Presently before this Court is Defendants AEP Energy Services, Inc.'s and
9 American Electric Power Company, Inc.'s Motion to Dismiss for Failure to State a Claim,
10 Pursuant to Rule 12(b)(6) (Doc. #205) filed on July 22, 2005. Plaintiffs filed Plaintiffs'
11 Memorandum in Opposition to Defendants AEP Energy Services, Inc.'s and American
12 Electric Power Company, Inc.'s Motion to Dismiss for Failure to State a Claim Pursuant to
13 Rule 12(b)(6) (Doc. #215) on August 16, 2005. Defendants filed a Reply (Doc. #226) on
14 September 6, 2005.

15 On July 22, 2005, AEP Energy Services, Inc.'s and American Electric Power
16 Company, Inc.'s Co-Defendants¹ moved this Court to dismiss Plaintiffs' first through fifth
17 claim for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc.
18 #206). These Defendants argued that the filed rate doctrine bars Plaintiffs' claims, or
19 alternatively the claims are preempted by federal jurisdiction. Defendants AEP Energy
20 Services, Inc.'s and American Electric Power Company, Inc.'s joined in Defendants'
21 motion to dismiss based on the filed rate doctrine and federal preemption, in addition to
22 arguing that this Court should dismiss Plaintiffs' claims for failure to state a claim. (Defs.

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24 ¹ Duke Energy Trading and Marketing, L.L.C.; Duke Energy North America, L.L.C.; Aquila Merchant
25 Services, Inc.; Centerpoint; CMS Energy Resources Management Company; Coral Energy Resources L.P.;
26 Dynegy Holding Co.; Dynegy Marketing & Trade; Dynegy Power Marketing; EnCana Corporation; WD
Energy; Reliant Energy Services, Inc.; Reliant Energy, Inc.; Sempra Energy Trading Corp.; The Williams
Companies, Inc.; Williams Power Company, Inc.; Xcel Energy, Inc.; and e prime, inc.

1 AEP Energy Serv., Inc.'s and American Electric Power Co., Inc.'s Mot. to Dismiss for
2 Failure to State a Cl., Pursuant to Rule 12(b)(6) at 1 n.1.)

3 On December 19, 2005, this Court issued an Order granting Defendants' motion
4 to dismiss. (Order dated Dec. 19, 2005 [Doc. #263].) This Court held that filed rate
5 doctrine barred Plaintiffs' claims as to all Defendants. (Id.) Defendants AEP Energy
6 Services, Inc.'s and American Electric Power Company, Inc.'s were inadvertently not
7 included in this Court's Dec. 19 Order, despite having joined in the joint Defendants'
8 motion. For the same reasons set forth in this Court's Dec. 19, 2005 Order, the filed rate
9 doctrine bars Plaintiffs' claims as to Defendants AEP Energy Services, Inc.'s and American
10 Electric Power Company, Inc.'s. Therefore, this Court's prior Dec. 19, 2005 Order shall
11 apply with equal force to AEP Energy Services, Inc.'s and American Electric Power
12 Company, Inc.'s and this Court need not consider Defendants AEP Energy Services, Inc.'s
13 and American Electric Power Company, Inc.'s other proposed grounds for dismissal.

14 IT IS THEREFORE ORDERED that Defendants AEP Energy Services, Inc.'s
15 and American Electric Power Company, Inc.'s Motion to Dismiss for Failure to State a
16 Claim, Pursuant to Rule 12(b)(6) is hereby GRANTED and Judgment is hereby entered in
17 favor of Defendants and against Plaintiffs.

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19 Dated: December 28, 2005

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22 PHILIP M. PRO
23 Chief United States District Judge
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